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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,536

06/10/2005

Wolfgang Rohde

LU 6075 (US)

4252

34872

7590

11/24/2006

BASELL USA INC.
INTELLECTUAL PROPERTY
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EXAMINER

NGUYEN, CAM N

ART UNIT

PAPER NUMBER

1754

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/538,536

Applicant(s)

ROHDE ET AL.

Examiner

Cam N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/09/06 (an amendment/response).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/09/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicants' amendments and remarks, filed on 08/09/06, have been made of record and entered. Claims 1, 5, & 7-9 have been amended.

Claims 1-9 are currently pending in this application.

Claim Rejections - 35 USC § 102(e)/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schneider et al., "hereinafter Schneider", (US Pat. 7,019,089 B2).

Schneider discloses a process for preparing supported, titanized chromium

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catalysts, which comprises the following steps: A) brining a spherical, spray-dried, oxidic support material into contact with a titanium compound in a suspension, B) brining the support material which has been treated into contact with a chromium salt solution in a suspension and subsequently removing the solvent, C) optionally, calcining the precatalyst obtained in step B), etc., and D) activating the precatalyst obtained in step B) or C) at a temperature of from 500°C to 800°C in an oxygen-containing atmosphere (see col. 14, claim 1). Methanol (or a protic medium) is used as a solvent to prepare the chromium mixture (see col. 10, Example 1). The oxidic support is silica gel (see col. 14, claim 2). Schneider also discloses a process for preparing homopolymers of ethylene and copolymers of ethylene, etc. using supported titanized chromium catalysts prepared by a process as described above (see col. 14, claim 7).

While Schneider is silent with respect to the water content contained in the protic medium, it is inherent that the same protic medium used would contain the same water content as being claimed.

In the alternative, if in fact the water content in the protic medium of the Schneider's process is not the same as the claimed water content then the following applies.

It would have been *prima facie obvious* to one of ordinary skill in the art at the time the invention was made to have controlled the water content in the protic medium in Schneider's process in order to result in an effective catalyst because of *In re Boesch*.

Response to Applicants' Arguments

4. Applicants' response filed on August 09, 2006 has been fully considered, but not deemed persuasive for the following reasons.

Applicants urgings have been noted, but not found persuasive because: (1) the minimal amount required for water content in the instant claims is "0%" due to the phrase "less than 20% by weight", which does not set forth specific amount in the lower range. (2) the transitional phrase "comprising" in the claims is open to include multiple process steps, such as disclosed by the prior art reference, Schneider et al. (3) it is considered there is no patentability in the claimed process step of adding titanium compound and chromium compound together as a medium or adding them separately one after another as disclosed in the Schneider et al. process. There is no criticality or unexpected results provided or comparative data showing such difference is significant.

Applicants further urging, that the claimed subject matter and the subject matter contained in the Schneider et al. reference are commonly owned, and Applicant was subject to an obligation to assignment to the owner of the Schneider et al. patent at the time the claimed subject matter was made, etc., has been noted. However, it is not found persuasive because there is no common inventor between the instant application and the Schneider et al. patent. Thus, the claimed subjected matter is considered made or invented by "another".

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

6. Claims 1-9 are pending. Claims 1-9 are rejected. No claims are allowed.

Contacts

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Cam N Nguyen, whose telephone number is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM - 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


/Cam N. Nguyen/

Nguyen/cnn

Primary Examiner

October 24, 2006

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